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HEWLETT-PACKARD COMPANY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re IBM 30(b)(6) Subpoena in the matter of:

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff and Counterclaim
Defendant,

v.

PLATFORM SOLUTIONS, INC.,

Defendant and Counterclaimant.

CASE NO. C07-80174 RMW (PVT)
The Hon. Patricia V. Trumbull

Underlying action pending in the United States
District Court for the Southern District of New
York, CASE NO. CV 06-13565 SCR

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF NONPARTY HEWLETT-
PACKARD COMPANY'S MOTION TO
MODIFY SUBPOENA AND FOR A
PROTECTIVE ORDER**

[Motion to Modify Subpoena and for a Protective
Order; Memo. of Points and Authorities;
Declarations of Angelique Kaounis Stephen
Howard, and John Pickett in Support Thereof;
and [Proposed] Order filed concurrently
herewith]

Date: June 3, 2008
Time: 10:00 a.m.
Place: Courtroom 5

In connection with its concurrently-filed *Motion to Modify Subpoena and for a Protective Order*, Nonparty Hewlett-Packard Company (“HP”) respectfully requests that this Court take judicial notice of the following documents under Rule 201 of the Federal Rules of Evidence:

I. DOCUMENTS OF WHICH JUDICIAL NOTICE IS REQUESTED

1. *Redacted Amended Civil Complaint* (without exhibits) filed by International Business Machines (“IBM”) against Platform Solutions, Inc. (“PSI”) on August 17, 2007, in the matter entitled *International Business Machines v. Platform Solutions Inc.*, CASE NO. CV 06-13565 SCR (S.D.N.Y.).

2. *Defendant and Counterclaimant Platform Solutions, Inc.’s Redacted Amended Counterclaims to International Business Machines Corporation’s Complaint* filed by PSI against IBM on February 8, 2008, in the matter entitled *International Business Machines v. Platform Solutions Inc.*, CASE NO. CV 06-13565 SCR (S.D.N.Y.).

3. The docket report in the matter entitled *International Business Machines Corporation v. Platform Solutions, Inc.*, Case No. CV 06-13565 SCR (S.D.N.Y.), which was downloaded from the PACER website for the U.S. District Court for the Southern District of New York at <https://ecf.nysd.uscourts.gov/cgi-bin/login.plon> on June 1, 2007.

True and correct copies of the foregoing documents are attached as Exhibits B, C, and U respectively, to the Declaration of Angelique Kaounis manually filed concurrently herewith (“Exhibits B, C, and U”).

II. THE COURT MAY CONSIDER THESE DOCUMENTS IN CONNECTION WITH HP’S MOTION TO MODIFY THE IBM 30(b)(6) SUBPOENA AND SHOULD TAKE JUDICIAL NOTICE OF THEM

HP respectfully requests that this Court take judicial notice of Exhibits 1 and 2 because they are documents filed with U.S. District Court for the Southern District of New York by the parties to the underlying action. A court must take judicial notice of a document “if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d).

The Court may take judicial notice of Exhibits B, C, and U because they are matters of public record readily verifiable through PACER (the U.S. District Court’s Online Electronic Document

retrieval system, located at <http://pacer.psc.uscourts.gov/>), whose contents are relevant to HP's instant motion, and whose authenticity has not been questioned. *See Roe v. Johnson*, 334 F. Supp. 2d 415, 419-20 & n.6 (S.D.N.Y. 2004) (“[C]ourt may take judicial notice of a public record pursuant to Rule 201(b),” including “prior complaints filed . . . and opinions issued in [] prior actions.”); *In re E.R. Fegert, Inc.*, 887 F.2d 955, 957-58 (9th Cir. 1989) (finding it permissible to take judicial notice of underlying bankruptcy case records).

This Court may take judicial notice of the Exhibits not only for the mere fact of their existence but also to evaluate the statements that are made therein. It is well settled that judicial notice of publicly filed documents is appropriate “for the purpose of determining what statements the documents contain” as long as the documents are not used to prove the truth of their contents. *In re Infonet Serv. Corp. Sec. Litig.*, 310 F. Supp. 2d 1080, 1083 n. 1 (C.D. Cal. 2003) (citation omitted). Here, the statements made in Exhibits B, C, and U reflect the allegations in the underlying litigation, as well as when those claims were made, and thus, speak directly to the relevance (or lack thereof) of the Topics in IBM's 30(b)(6) Subpoena – which is a subject of HP's instant Motion. Thus, the Court's consideration of the contents of these documents is proper.

III. CONCLUSION

For the foregoing reasons, HP respectfully requests that this Court take judicial notice of the documents and information attached as Exhibits B, C, and U, respectively, to the Declaration of Angelique Kaounis (manually filed concurrently herewith).

DATED: April 29, 2008

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Angelique Kaounis
ANGELIQUE KAOUNIS

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